

REMARKS

Applicant responds to a non-final office action dated mailed 7 March 2005. In an initial preliminary amendment applicant's representative canceled claims 1-41 and submitted claims 42-51. At the time the preliminary amendment was made, January 5, 2004, there was another pending application from the same family. The Examiner made provisional Double Patenting rejections in the 7 March '05 office action, items 16, 17 and 18, referring to copending application 09/938700; in addition to item 19, referring to copending application 10/152,190. Applicant advises the patent office that copending application 09/938700, has now issued at US 6,887,472, on May 3, 2005 and that copending application 10/152,190, applicant's docket number PC 11011A, is now allowed with an issue fee due on August 31, 2005.

The Examiner rejected claims 45 and 47 (item 16) claims 42-44, 46 and 48-51 (item 18) and claims 42, 43, 44, 46, 48, 49, and 50 (item 19) as provisional Double Patenting rejections. Thus all of the claims stand rejected as claiming the same or substantially the same as previously allowed or soon to be allowed subject matter. At this time applicant is not prepared to file any terminal disclaimers of any subject matter presented herein.

Given the allowance of the two applications and claims noted above, applicant does not wish, at the moment, to continue the prosecution of the claims presented here, at this time. Applicant is therefore, with this response, canceling pending claims 42-51. This leaves no claims pending in this application series following the entry of this amendment and these remarks. Concurrent with this response applicant is filing a continuing patent application, today, and intends to prosecute claims directed to other subject matter, also disclosed and claimed in the parent application.

This amendment and response therefore officially make all rejections in the 7 March 2005 Office Action moot and no response is required. However, because of concerns about comments in the file, applicants would like to assert the following:

Applicant rejects each and every objection and rejection made in the 7 March 2005. Applicant in particular rejects any and all 102 and 103 rejections based on Hollis (item 8), Mermer (item 9) and Wang (item 10). References that disclose DNA to full length canine IgE, e.g. Hollis, with 1928 nucleotides simply do not, in any way anticipate SEQ ID NO: 4 having the unique property, as claimed, of not causing anaphylaxis when administered to an animal. Simply because nucleotides of SEQ ID NO: 4 have some homology with 124 of 1928 nucleotides in

Hollis does not suggests they are the same compound. These nucleic acids are complex molecules and simply because one shares certain elements with another does not make one anticipatory over the other. Similar remarks apply to Mermer and Wang. Mermer and Wang disclose different compounds that do different things than those claimed herein and given the complex and unpredictable chemical and biological arts one cannot simply conclude that very different compounds behave the same.

Applicant also traverses Examiner's suggestion that use of the word "comprising" in the claim language is unacceptable or somehow "allows for the incorporation of additional sequence" and thus would claim the entire full length canine IgE. Not only does the specification make clear, at any number of places, that these sequences are preferred, (for example see p. 15 top right column of US 2004/0146504, "Preferred peptides of the present invention include peptides of SEQ ID NO: 1 to SEQ ID NO: 14 and their homologous sequences from other IgE species.") but in addition only sequences which are not anaphylactic are claimed. (for example see see p. 6 paragraph 0072. "The antigenic peptides of the present invention ..., which are not anaphylactic.") Thus it should be clear that when the claims use the language comprising, the use is in accordance with its normal and accepted usage. It includes the chemical or biochemical entity as described in the specification in its entirety, with or without other materials. The word is entirely useful and appropriate in these claims and in any related allowed claims.

Respectfully submitted,



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Date: 4 Aug 2005

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